

(iii) Which the person maintaining the fund agrees with the Secretary of Transportation will be operated in the U.S. foreign, Great Lakes, or non-contiguous domestic trade or in the fisheries of the United States.

(3) The term *agreement vessel* means any eligible vessel or qualified vessel which is subject to an agreement entered into under section 607 of the Act.

(4) The term *vessel* includes cargo handling equipment which the Secretary of Transportation determines is intended for use primarily on the vessel. The term *vessel* also includes an ocean-going towing vessel or an ocean-going barge or comparable towing vessel or barge operated in the Great Lakes.

(b) Insofar as the computation and collection of taxes are concerned, other terms used in the regulation in this part, except as otherwise provided in the Act or this part, have the same meaning as in the Code and the regulations thereunder.

[29 FR 10464, July 28, 1964]

PART 392 [RESERVED]

PART 393—AMERICA'S MARINE HIGHWAY PROGRAM

Sec.

393.1 Purpose.

393.2 Definitions.

393.3 Marine Highway Corridors.

393.4 Marine Highway Projects.

393.5 Incentives, Impediments and Solutions.

393.6 Research on Marine Highway Transportation.

AUTHORITY: Energy Independence and Security Act of 2007, Sections 1121, 1122, and 1123 of Public Law 110-140, enacted into law on December 19, 2007 (121 Stat. 1492).

SOURCE: 75 FR 18101, Apr. 9, 2010, unless otherwise noted.

§ 393.1 Purpose.

(a) This part prescribes final regulations establishing a short sea transportation program as set forth in Sections 1121, 1122, and 1123 of the Energy Independence and Security Act of 2007, enacted into law on December 19, 2007.

(b) The purpose of America's Marine Highway Program is described in Section 1121. Section 1121 states that

“[t]he Secretary shall designate short sea transportation routes as extensions of the surface transportation system to focus public and private efforts to use the waterways to relieve landside congestion along coastal corridors.” America's Marine Highway Program consists of four primary components:

(1) *Marine Highway Corridor Designations*. This regulation establishes the goals and methods by which specific Marine Highway Corridors (including Connectors and Crossings) will be identified and designated by the Secretary of Transportation. The purpose of designating Marine Highway Corridors is to integrate America's Marine Highway into the surface transportation system. The Marine Highway Corridors will serve as extensions of the surface transportation system. They are commercial coastal, inland, and intra-coastal waters of the United States, described in terms of the specific landside transportation routes (road or rail line) that they supplement. They support the movement of passengers and cargo along these specified routes and mitigate the effects of landside congestion, such as increased emissions and energy inefficiencies. In addition to corridors, the Secretary may designate Marine Highway “Connectors” and “Crossings” as described in paragraphs (h)(1) and (h)(2) of § 393.2. Through America's Marine Highway Program, the Department will encourage the development of multi-jurisdictional coalitions and focus public and private efforts and investment on shifting freight and passengers from at- or near capacity landside routes to more effectively utilize Marine Highway Corridors.

(2) *Marine Highway Project Designations*. This regulation establishes the goals and methods by which specific Marine Highway Projects will be identified and designated by the Secretary of Transportation. The purpose is to designate projects that, if successfully implemented, expanded, or otherwise enhanced, would reduce external costs and provide the greatest benefit to the public. Closely linked to congestion relief, public benefits can include, but are not limited to, reduced emissions, including greenhouse gases, reduced energy consumption, reduced costs associated with landside transportation

infrastructure maintenance savings, improved safety and transportation system resiliency and redundancy. Additional consideration will be given to Marine Highway Projects that represent the most cost-effective option among other modal improvements. Designated Marine Highway Projects may receive direct support from the Department as described in this section.

(3) *Incentives, Impediments and Solutions.* This section outlines how the Department, in partnership with public and private entities, will identify potential incentives, seek solutions to impediments to encourage utilization of America's Marine Highway and incorporate it, including ferries, in State, regional, local, and Tribal government transportation planning.

(4) *Research.* This section describes the research that the Department, working with the Environmental Protection Agency, will conduct to support America's Marine Highway, within the limitations of available resources, and to encourage multi-State planning. Research would include environmental and transportation impacts (benefits and costs), technology, vessel design, and solutions to impediments to the Marine Highway.

(c) In addition, vessels engaged in Marine Highway operations may apply for Capital Construction Fund (CCF) benefits. This program was created to assist owners and operators of U.S.-flag vessels in accumulating the capital necessary for the modernization and expansion of the U.S. merchant marine by encouraging construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money placed into a CCF.

§ 393.2 Definitions.

For the purposes of this part:

(a) *Administrator.* The Maritime Administrator, Maritime Administration, U.S. DOT, who has been authorized by the Secretary of Transportation to administer America's Marine Highway Program.

(b) *Applicant.* An entity that applies for designation of a Marine Highway Corridor or Project under this regulation.

(c) *Coastwise Shipping Laws.* Laws, including the Jones Act, as set forth in Chapter 551 of Title 46, United States Code.

(d) *Corridor Sponsor.* An entity that recommends a Corridor (including a Connector or Crossing, as described below) for designation as a Marine Highway Corridor. Corridor sponsors must be public entities, including but not limited to, Metropolitan Planning Organizations, State governments (including Departments of Transportation), port authorities and Tribal governments, who may submit recommendations for designation as a Marine Highway Corridor.

(e) *Department.* The U.S. Department of Transportation (DOT).

(f) *Domestic Trade.* Trade between points in the United States.

(g) *Lift-on/Lift-off (LO/LO) Vessel.* A vessel of which the loading and discharging operations are carried out by cranes and derricks.

(h) *Marine Highway Corridor.* A water transportation route that serves as an extension of the surface transportation system that can help mitigate congestion-related impacts along a specified land transportation route. It is identified and described in terms of the land transportation route that it supplements, and must, by transporting freight or passengers, provide measurable benefits to the surface transportation route in the form of traffic reductions, reduced emissions, energy savings, improved safety, system resiliency, and/or reduced infrastructure costs. Routes that cannot relieve landside congestion (*i.e.*; those to/from islands) are not eligible for designation under this program. In addition to "Corridors," prospective sponsors can recommend Marine Highway "Connectors" and "Crossings" for designation as described in paragraphs (h)(1) and (h)(2) of this section:

(1) *Marine Highway Connectors* are routes that will provide substantial linkages to or between the larger corridors, and serve, in conjunction with a corridor, to move freight and/or passengers into, out of or within a region.

(2) *Marine Highway Crossings* are routes that provide relief to congested border crossings, bridges, and tunnels or offer a shorter route than the

landside alternative. Although they may not parallel a corridor or connector, crossings may provide relief to a corridor or connector, or to local or regional passenger and freight transportation systems. Crossings may include cross-harbor and inter-terminal passenger and/or freight services.

(i) *Marine Highway Project*. A new Marine Highway service, or expansion of an existing service, that receives support from the Department and provides public benefit by transporting passengers and/or freight (container or wheeled) in support of all or a portion of a Marine Highway Corridor, Connector or Crossing. Projects are proposed by a project sponsor and designated by the Secretary under this program.

(j) *Marine Highway (or Short Sea Transportation)*: The carriage by vessel of passengers and/or cargo (intermodal containers, trailers, car floats, rail ferries and other cargoes loaded by wheeled technology) that is loaded at a port in the United States and unloaded either at another port in the United States, or that is loaded at a port in the United States and unloaded at a port in Canada located in the Great Lakes-Saint Lawrence Seaway System, or loaded at a port in Canada located in the Great Lakes-Saint Lawrence Seaway System and unloaded at a port in the United States. For the purposes of this specific program, routes and services that do not offer potential relief to a landside transportation route (*i.e.*; to/from islands) do not fall within this definition.

(k) *Project sponsor*. Project sponsors must be public entities, including but not limited to, Metropolitan Planning Organizations, State governments (including State Departments of Transportation), port authorities and Tribal governments, who may submit applications for designation as a Marine Highway Project.

(l) *Roll-on/Roll-off (RO/RO) Vessel*. Any vessel that has ramps allowing cargo to be loaded and discharged by means of wheeled vehicles so that cranes are not required. This includes, but is not limited to trailers, car floats and ferries, including rail ferries.

(m) *Secretary*. The Secretary of Transportation.

(n) *United States Documented Vessel*. A vessel documented under 46 U.S.C. Chapter 121.

§ 393.3 Marine Highway Corridors.

(a) *Summary*. The purpose of this section is to designate specific routes as Marine Highway Corridors (including Connectors and Crossings). Corridors will be designated by the Secretary. The goal of this designation process is to accelerate the development of multi-State and multi-jurisdictional Marine Highway Corridors to relieve landside congestion. Designation will encourage public/private partnerships, and help focus investment on those Marine Highway Corridors that offer the maximum potential public benefit in congestion-related emissions reduction, energy efficiency, safety and other areas. Corridors already designated as “Corridors of the Future” under DOT’s National Strategy to Reduce Congestion that have commercial waterways that parallel or can otherwise benefit them will be fast-tracked for designation as Marine Highway Corridors.

(b) *Objectives*. The primary objectives of the designation of Marine Highway Corridors are to:

(1) Establish Marine Highway Corridors as “extensions of the surface transportation system” as provided by Section 1121 of the Energy Independence and Security Act of 2007.

(2) Develop multi-jurisdictional coalitions that focus public and private efforts to use the waterways to relieve congestion-related impacts along land transportation routes for freight and passengers.

(3) Obtain public benefit by shifting freight and passengers in measurable terms from land transportation routes to Marine Highway Corridors. In addition, public benefits can include, but are not limited to, reduced emissions, including greenhouse gases, reduced energy consumption, landside infrastructure maintenance savings, improved safety, and added system resiliency. Additional consideration will be given to Marine Highway Projects that represent the most cost-effective option among other modal improvements and projects that reduce border delays.

(4) Identify potential savings that could be realized by providing an alternative to land transportation infrastructure construction and maintenance.

(c) *Designation of Marine Highway Corridors.* The Department will continue to accept Marine Highway Corridor recommendations from prospective Corridor sponsors. Corridor sponsors must be public entities, including but not limited to, Metropolitan Planning Organizations, State governments (including State Departments of Transportation), port authorities and Tribal governments. In addition to “Corridors,” prospective sponsors may recommend Marine Highway “Connectors” and “Crossings” for designation by the Secretary (*see* definitions). The Secretary will make Marine Highway Corridor designations. In certain cases the Secretary of Transportation may designate a Marine Highway Corridor, Connector or Crossing without receipt of a recommendation. The Department will publish all Marine Highway Corridors that receive designation by the Secretary on the Maritime Administration’s Web site. Interested parties are encouraged to visit http://www.marad.dot.gov/ships_shipping_landing_page/mhi_home/mhi_home.htm for the current list of Designated Corridors. When responding to specific solicitations for Marine Highway Corridors, Connectors and Crossings by the Secretary of Transportation, the sponsors should provide the following information in the recommendation:

(1) *Physical Description of Proposed Marine Highway Corridor.* Describe the proposed Marine Highway Corridor (including Connector or Crossing), and its connection to existing or planned transportation infrastructure and intermodal facilities. Include key navigational factors such as available draft, channel width, bridge or lock clearance and identify if they could limit service.

(2) *Surface Transportation Corridor Served.* Provide a summary of the land transportation route that the Marine Highway would benefit. Include a description of the route, its primary users, the nature, locations and occurrence of travel delays, urban areas af-

ected, and other geographic or jurisdictional issues that impact its overall operation and performance.

(3) *Involved Parties.* Provide the organizational structure of the parties recommending the Corridor designation including business affiliations, and private sector stakeholders. Multi-jurisdictional coalitions may include State Departments of Transportation, Metropolitan Planning Organizations, municipalities and other governmental entities (including Tribal) that have been engaged. Include the extent to which they support the corridor designation. Provide any affiliations with environmental groups or civic associations.

(4) *Passengers and Freight.* Identify the number of likely passengers and/or quantity of freight that are candidates for shifting to water transportation on the proposed Marine Highway Corridor. If known, include specific shippers, manufacturers, distributors or other entities that could benefit from a Marine Highway alternative, and the extent to which these entities have been engaged.

(5) *Congestion Reduction.* Describe the extent to which the proposed Corridor could relieve landside congestion in measurable terms. Include any known offsetting land transportation infrastructure savings (either construction or maintenance) that would result from the project.

(6) *Public benefits.* Provide, if known, the savings over status quo in emissions, including greenhouse gases, energy consumption, landside infrastructure maintenance costs, safety and system resiliency. Specify if the Marine Highway Corridor represents the most cost-effective option among other modal improvements. Include consideration of the implications future growth may have on the proposal.

(7) *Impediments.* Describe known or anticipated obstacles to shifting capacity to the proposed Marine Highway Corridor. Include any strategies, either in place or proposed, to deal with the impediments.

(d) *Scope of Department Support.* Marine Highway Corridors, Connectors and Crossings that receive designation will be posted on a Web site maintained by the Maritime Administration. The

Department of Transportation will coordinate with Corridor sponsors to identify the most appropriate actions to support the Corridors. Support could include any of the following, as appropriate and within agency resources:

(1) Promote the Corridor with appropriate governmental, State, local and Tribal government transportation planners, private sector entities or other decision-makers.

(2) Coordinate with ports, State Departments of Transportation, Metropolitan Planning Organizations, localities, other public agencies (including Tribal governments) and the private sector to support the designated corridor. Efforts can be aimed at obtaining access to land or terminals, developing landside facilities and infrastructure, and working with Federal, regional, State, local, and Tribal governmental entities to remove barriers to self-supporting operations.

(3) Pursue memorandums of agreement with other Federal entities to transport Federally owned or generated cargo using waterborne transportation along the Marine Highway Corridor, when practical or available.

(4) Assist with collection and dissemination of data for the designation and delineation of Marine Highway Corridors as available resources permit.

(5) Work with Federal entities and regional, State, local and Tribal governments to include designated Corridors in transportation planning.

(6) Bring specific impediments to the attention of the advisory board chartered to address such barriers.

(7) Conduct research on issues specific to designated Corridors as available resources permit.

(8) Utilize current or future Federal funding mechanisms, as appropriate, to support the Corridor.

(9) Communicate with designated Corridor coalitions to provide ongoing support and identify lessons learned and best practices for the overall Marine Highway program.

§ 393.4 Marine Highway Projects.

(a) *Summary.* The purpose of this section is to designate projects that, if successfully implemented, expanded, or otherwise enhanced, would reduce ex-

ternal costs and provide the greatest benefit to the public. In addition to congestion relief, public benefits can include, but are not limited to, reduced emissions, including greenhouse gases, reduced energy consumption, landside infrastructure maintenance savings, and improved safety. The Department will give additional consideration to Marine Highway Projects that represent the most cost-effective option among other modal improvements or reduce border crossing delays. Some Marine Highway Projects can also provide public benefit by offering routes that are more resilient to natural or human incidents that interrupt surface transportation, or provide additional, redundant surface transportation options. Designation can help focus public and private investment on pre-identified projects that offer the maximum potential public benefit. Designated Marine Highway Projects may receive support from the Department as described in this section.

(b) *Objectives.* The primary objectives of the designation of Marine Highway Projects are to:

(1) Reduce landside congestion-related impacts.

(2) Identify proposed water transportation services that represent the greatest public benefit as measured in reduced emissions, including greenhouse gases, reduced energy consumption, landside infrastructure maintenance savings and improved safety.

(3) Identify potential savings with water transportation projects that represent the most cost-effective option among other modal improvements or reduce border crossing delays.

(4) Improve surface transportation system resiliency and provide additional options.

(5) Focus resources on those projects that offer the greatest likelihood of successful operation.

(6) Develop best practices for the Marine Highway Program.

(7) Provide specific examples, with performance measures and quantifiable outcomes, of successful Marine Highway Projects for demonstration of the benefits of water transportation.

(c) *Designation of Marine Highway Projects.* The Department will solicit applications for designation as specific

Marine Highway Projects. Applications will be accepted from a Project sponsor. Project sponsors must be public entities, including but not limited to, Metropolitan Planning Organizations, State governments (including State Departments of Transportation), port authorities and Tribal governments. Project sponsors are encouraged to develop coalitions and public/private partnerships with the common objective of developing the specific Marine Highway Project. Potential partners can include vessel owners and operators, third party logistics providers, trucking companies, shippers, railroads, port authorities, State, regional, local and Tribal government transportation planners, environmental interests or any combination of entities working in collaboration under a single application. Candidate Projects can start a new operation or be an existing Marine Highway operation where expansion or improvements present maximum public benefit. Applications must meet the requirements of coastwise shipping laws and all applicable Federal, State and local laws.

(d) *Action by the Department of Transportation.* The Department will evaluate and select Projects based on an analysis and technical review of the information provided by the applicant. The Department will also evaluate projects based on the results of an environmental analysis. Projects that support a designated Marine Highway Corridor (or Connector or Crossing), receive a favorable technical review, and meet other criteria as defined in 46 CFR 393.4(e), may be nominated by the Maritime Administrator for selection by the Secretary. Upon designation as a Marine Highway Project, the Department will coordinate with the Project sponsor to identify the most appropriate Departmental actions to support the project. Department support could include any of the following, as appropriate and within agency resources:

(1) Promote the service with appropriate governmental, regional, State, local or Tribal government transportation planners, private sector entities or other decision makers.

(2) Coordinate with ports, State Departments of Transportation, Metropolitan Planning Organizations, local-

ities, other public agencies and the private sector to support the designated service. Efforts can be aimed at identifying resources, obtaining access to land or terminals, developing landside facilities and infrastructure, and working with Federal, regional, State, local or Tribal governmental entities to remove barriers to success.

(3) Pursue memorandums of agreement with other Federal entities to transport Federally owned or generated cargo using the services of the designated project, when practical or available.

(4) In cases where transportation infrastructure is needed, Project sponsors may request to be included on the Secretary of Transportation's list of high-priority transportation infrastructure projects under Executive Order 13274, "Environmental Stewardship and Transportation Infrastructure Project Review." For these projects, Executive Order 13274 provides that Federal agencies shall, to the maximum extent practicable, expedite their reviews for relevant permits or other approvals and take related actions as necessary, consistent with available resources and applicable laws.

(5) Assist with developing individual performance measures for Marine Highway Projects.

(6) Work with Federal entities and regional, State, local and Tribal governments to include designated Projects in transportation planning.

(7) Bring specific impediments to the attention of the advisory board chartered to address these barriers.

(8) Conduct research on issues specific to Marine Highway Projects.

(9) Utilize current or future Federal funding mechanisms, as appropriate, to support the Projects.

(10) Maintain liaison with sponsors and representatives of designated Projects to provide ongoing support and identify lessons learned and best practices for other projects and the overall Marine Highway program.

(e) *Application for Designation as a Marine Highway Project.* This section specifies the criteria that the Department will use to evaluate Marine Highway Project applications. Applicants should provide the following:

(1) *Applications for Proposed Projects.* When responding to specific solicitations for Marine Highway Projects by the Department, describe the overall operation of the proposed project, including which ports and terminals will be served, number and type of vessels, size, quantity and type of cargo and/or passengers, routes, frequency, and other relevant information. Applicants should also include the following information in their project applications:

(i) *Marine Highway Corridor(s).* Identify which, if known, designated Marine Highway Corridors, Connectors or Crossings will be utilized.

(ii) *Organization.* Provide the organizational structure of the proposed project, including business affiliations, environmental, non-profit organizations and governmental or private sector stakeholders.

(iii) *Partnerships.*

(A) *Private Sector participation.* Identify private sector partners and describe their levels of commitment. Private sector partners can include terminals, vessel operators, shipyards, shippers, trucking companies, railroads, third party logistics providers, shipping lines, labor, workforce and other entities deemed appropriate by the Secretary.

(B) *Public Sector partners.* Identify State Departments of Transportation, Metropolitan Planning Organizations, municipalities and other governmental entities (including Tribal) that have been engaged and the extent to which they support the service. Include any affiliations with environmental groups or civic associations.

(C) *Documentation.* Provide documents affirming commitment or support from entities involved in the project.

(iv) *External cost savings and public benefit.*

(A) *Potential relief to surface transportation travel delays.* Describe the extent to which the proposed project will relieve landside congestion in measurable terms now and in the future, such as reductions in vehicle miles traveled. Include the landside routes that stand to benefit from the water transportation operation.

(B) *Emissions benefits.* Address the savings, in quantifiable terms, now and

in the future over the current practice in emissions, including greenhouse gas emissions, criteria air pollutants or other environmental benefits the project offers.

(C) *Energy savings.* Provide an analysis of potential reductions in energy consumption, in quantifiable terms, now and in the future over the current practice.

(D) *Landside transportation infrastructure maintenance savings.* To the extent the data is available, indicate, in dollars per year, the projected savings of public funds that would result from a proposed project in road or railroad maintenance or repair, including pavement, bridges, tunnels or related transportation infrastructure. Include the impacts of accelerated infrastructure deterioration caused by vehicles currently using the route, especially in cases of oversize or overweight vehicles.

(E) *Safety improvements.* Describe, in measurable terms, the projected safety improvements that would result from the proposed operation.

(F) *System resiliency and redundancy.* To the extent data is available describe, if applicable, how a proposed Marine Highway Project offers a resilient route or service that can benefit the public. Where land transportation routes serving a locale or region are limited, describe how a proposed project offers an alternative and the benefit this could offer when other routes are interrupted as a result of natural or man-made incidents.

(v) *Capacity Alternatives.* In cases where a Marine Highway Project is proposed as an alternative to constructing new land transportation capacity, indicate, in quantifiable terms, whether the proposed project represents the most cost-beneficial option among other modal improvements. Include in the comparison an analysis of the full range of benefits expected from the project. Include the projected savings in life-cycle costs of publicly maintained infrastructure.

(vi) *Business Planning.* Indicate the degree to which the proposed project is associated with a service that is self-supporting:

(A) *Financial plan.* Provide the project's financial plan and provide

projected revenues and expenses. Include labor and operating costs, drayage, fixed and recurring infrastructure and maintenance costs, vessel or equipment acquisition or construction costs, *etc.* Include any anticipated changes in local or regional freight or passenger transportation, policy or regulations, ports, industry, corridors, or other developments affecting the project.

(B) *Demand for services.* Identify shippers that have indicated an interest in and level of commitment to the proposed service, or describe the specific commodities, market, and shippers the service will attract, and the extent to which these entities have been engaged. In the case of services involving passengers, provide indicators of demand for the service, anticipated volumes and other factors that indicate likely utilization of the service. Include a marketing strategy, if one is in place.

(C) *Analysis.* Provide, (or reference, if publicly available) market or transportation system research, data, and analysis used to develop or support the business model.

(vii) *Proposed Project Timeline.* Include a proposed project timeline with estimated start dates and key milestones. Include the point in the timeline at which the enterprise is anticipated to attain self-sufficiency (if applicable).

(viii) *Support.* Describe any known or anticipated obstacles to either implementation or long-term success of the project. Include any strategies, either in place or proposed, to mitigate impediments. In the event that public sector financial support is being sought, describe the amount, form and duration of public investment required.

(ix) *Environmental Considerations.* Applicants must provide all information on hand that would assist the Department in conducting environmental analysis of the proposed project under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*)

(2) *Cost and Benefits.* The Department believes that benefit-cost analysis (BCA), including the monetization and discounting of costs and benefits to a common unit of measurement in present-day dollars, is important. The systematic process of comparing ex-

pected benefits and costs helps decision-makers organize information about, and evaluate trade-offs between alternative transportation investments. However, we also recognize that development of a thorough BCA can be prohibitively costly to applicants, especially in cases where Federal funding is not currently available. Applicants should provide a BCA, if one is available. At a minimum, applicants should provide estimates of the project's expected benefits in external cost savings and public benefit and costs of capacity alternatives [sections 393.4(e)(1)(iv) and 393.4(e)(1)(v)].

(3) *Standards and Measures.* The Department will post, on the Maritime Administration's Web site, (<http://www.marad.dot.gov>) proposed standards (*i.e.*: the definition and use of ton-miles, measures of landside congestion, *etc.*) and measures that, lacking more specific or technically supported applicant-provided data, will be used by the Department to evaluate applications. Some examples of measures are the use of a standard cargo tonnage per container, fuel consumption rates, vehicle emissions and safety data for various transportation options, and baseline maintenance, repair and construction costs for surface transportation infrastructure. While we recognize that these standards and measures may not be ideal, the intent is to establish a minimal baseline by which to evaluate external costs and public benefits of transportation options. In the event applicants provide more specific and supported measures, they will be used in evaluating the potential benefits and costs of a project.

(4) *Protection of Confidential Business Information.* All information submitted as part of or in support of an application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If your application includes information that you consider to be trade secret or confidential commercial or financial information, please do the following:

(i) Note on the front cover that the submission "Contains Confidential Business Information (CBI);"

(ii) Mark each affected page “CBI;” and

(iii) Clearly highlight or otherwise denote the CBI portions. The Department protects such information from disclosure to the extent allowed under applicable law. In the event the Department receives a Freedom of Information Act (FOIA) request for the information, the Department will follow the procedures described in its FOIA regulations at 49 CFR § 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

(5) *Contents of Application.* When responding to specific solicitations for Marine Highway Projects by the Department, applicants should include all of the information requested by Section 393.4(e)(1) and (2) above organized in a manner consistent with the elements set forth in that section. The Department reserves the right to ask any applicant to supplement the data in its application, but expects applications to be complete upon submission. The narrative portion of an application should not exceed 20 pages in length. The narrative should address all relevant information contained in paragraphs (e)(1)(i) through (ix) of § 393.4. Documentation supporting the assertions made in the narrative portion may also be provided in the form of appendices, but limited to relevant information. Applications may be submitted electronically via the FEDERAL REGISTER (<http://www.regulations.gov>). Applications submitted in writing must include the original and three copies and must be on 8.5" × 11" single spaced paper, excluding maps, Geographic Information Systems (GIS) representations, *etc.* In the event that the sponsor of a Marine Highway Project that has already been designated by the Secretary seeks a modification to the designation because of a change in project scope, an expansion of the project, or other significant change to the project, the project sponsor should request the change in writing to the Secretary via the Administrator of the Maritime Administration. The request should contain any changed or new information that is relevant to the project.

(6) *Evaluation Process.* Upon receipt by the Maritime Administrator, the application will be evaluated using the criteria outlined above during a technical review and an environmental analysis. The review will assess factors such as project scope, impact, public benefit, environmental effect, offsetting costs, cost to the Government (if any), the likelihood of long-term self-supporting operations, and its relationship with Marine Highway Corridors once designated (*See* section 393.3 Marine Highway Corridors). Additional factors may be considered during the evaluation process. Upon completion of the technical review, applications will be forwarded to an inter-agency review team as described below. The Department will establish an inter-agency team to review each application received during the solicitation period (solicitation periods will be established via a future FEDERAL REGISTER Notice). The evaluation team will be led by the Office of the Secretary and will include members of the Maritime Administration, other Department of Transportation Operating Administrations, and as appropriate, representation from other Federal agencies and other representatives, as needed. The inter-agency team will evaluate applications using criteria that establishes the degree to which a proposed project can; reduce external cost and provide public benefit; offer a lower-cost alternative to increasing capacity in the Corridor, and; demonstrate the likelihood the service associated with the project will become self-supporting in a specified and reasonable timeframe. The Department will assign ratings of “highly recommended,” “recommended,” or “not recommended” for each application based on the criteria set forth in section 393.4(e)(1) and (2) of this rule. Specific numerical scores will not be assigned. Within the overall criteria of External Cost Savings and Public Benefit, elements paragraphs (e)(1)(iv)(A) through (e)(1)(iv)(D) of this section will receive greater weight than will paragraphs (e)(1)(iv)(E) and (e)(1)(iv)(F) of this section. For the Business Planning elements, only paragraphs (e)(1)(vi)(A) and (e)(1)(vi)(B) of this section will be weighted; paragraph (e)(1)(vi)(C) of this section will

be reviewed to assess the degree to which future projections such as operating costs and freight/passenger demand are accurate and reliable. Projects that have been deemed “highly recommended” and “recommended” will be placed on a preliminary list of projects for designation. The Secretary will make final designations in a manner that provides a balance between geographic regions and business models (*i.e.* among freight and passenger, expansion and new service, and existing vessel/terminal and new construction) to the degree this can be achieved. Prospective project sponsors will be notified as to the status of their application in writing once a determination has been made.

(7) *Performance Monitoring.* (i) Once designated projects enter the operational phase (either start of a new service, or expansion of existing service), the Department will evaluate them regularly to determine if the project’s objectives are being achieved.

(ii) Overall project performance will be in one of three categories—exceeds, meets, or does not meet original projections in each of the three areas defined below:

Public benefit. Does the project meet the stated goals in shifting specific numbers of vehicles (number of trucks, rail cars or automobiles) off the designated landside routes? Other public benefits, including energy savings, reduced emissions, and safety improvements will be assumed to be a direct derivative of either numbers of vehicles shifted, or vehicle/ton miles avoided, unless specific factors change (such as a change in vessel fuel or emissions).

Public cost. Is the overall cost to the Federal government (if any) on track with estimates at the time of designation? The overall cost to the Federal government represents the amount of Federal investment (*i.e.* direct funding, loan guarantees or similar mechanisms) reduced by the offsetting savings the project represents (road/bridge wear and tear avoided, infrastructure construction or expansion deferred).

Timeliness factor. Is the project on track for the point at which the enterprise is projected to attain self-sufficiency? For example, if the project was anticipated to attain self-sufficiency

after 36 months of operation, is it on track at the point of evaluation to meet that objective? This can be determined by assessing revenues, freight and passenger trends, expenses and other factors established in the application review process.

§ 393.5 Incentives, Impediments and Solutions.

(a) *Summary.* The purpose of this section is to identify short term incentives and solutions to impediments in order to encourage use of the Marine Highway for freight and passengers.

(b) *Objectives.* This section is aimed at increasing the use of the Marine Highways through the following primary objectives:

(1) Encourage the integration of Marine Highways in transportation plans at the State, regional, local and Tribal levels.

(2) Develop short term incentives aimed at expanding existing or starting new Marine Highway operations.

(3) Identify and seek solutions to impediments to the Marine Highway.

(c) *Federal, State, Local, Regional and Tribal Transportation Planning.* The Department will coordinate with Federal, State, local and Tribal governments and Metropolitan Planning Organizations to develop strategies to encourage the use of America’s Marine Highways for transportation of passengers and cargo. The Department will:

(1) Work with these entities to assess plans and develop strategies, where appropriate, to incorporate Marine Highway transportation, including ferries, and other marine transportation solutions for regional and interstate transport of freight and passengers in their statewide and metropolitan transportation plans.

(2) Facilitate groups of States and multi-State transportation entities to determine how Marine Highway transportation can address traffic delays, bottlenecks, and other interstate transportation challenges to their mutual benefit.

(3) Identify other Federal agencies that have jurisdiction over the project, or which currently provide funding for components of the project, in order to determine the extent to which those agencies should be consulted with and

Maritime Administration, DOT

§ 393.6

invited to assist in the coordination process.

(4) Consult with Federal Highway Administration, Federal Motor Carrier Safety Administration, Federal Railroad Administration, Federal Transit Administration and other entities within DOT, as appropriate, for support and to evaluate costs and benefits of proposed Marine Highway Corridors and Projects.

(d) *Short-Term Incentives.* The Department will develop proposed short-term incentives to encourage the use, initiation, or expansion of Marine Highway services in consultation with shippers and other participants in transportation logistics, and government entities, as appropriate.

(e) *Impediments and Solutions.* The Department will either establish a board, or modify an existing body, in accordance with the Federal Advisory Committee Act (FACA), whose role is to identify impediments that hinder effective use of the Marine Highways and recommend solutions. The Board will meet regularly and report its findings and recommended solutions to the Maritime Administrator. Board membership will include, among others, representation by Federal Departments and Agencies, State Departments of Transportation, Metropolitan Planning Organizations and other local public

entities including Tribal governments and private sector stakeholders. The Department will take actions, as appropriate, to address impediments to the Marine Highways.

§ 393.6 Research on Marine Highway Transportation.

(a) *Summary.* The Department will work in consultation with the Environmental Protection Agency and other entities as appropriate, within the limits of available resources, to conduct research in support of America's Marine Highway or in direct support of designated Marine Highway Corridors and Projects.

(b) *Objectives.* The primary objectives of selected research Projects are to:

(1) Identify and quantify environmental and transportation-related benefits that can be derived from utilization of the Marine Highways as compared to other modes of surface transportation.

(2) Identify existing or emerging technology, vessel design, and other improvements that would reduce emissions, increase fuel economy, and lower costs of Marine Highway transportation and increase the efficiency of intermodal transfers.

PARTS 394–399 [RESERVED]